

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

IN THE MARION COUNTY SUPERIOR COURT  
CAUSE NO. 49D04-0702-PL-004337

STATE OF INDIANA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
GRACE MARK and )  
JASON M. MARK, individually and )  
doing business as, Mark Motors, )  
 )  
Defendants. )

**FILED**

DEC 03 2007

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*Elizabeth J. White*  
CLERK OF THE MARION CIRCUIT COURT

**AMENDED COMPLAINT FOR INJUNCTION  
CONSUMER RESTITUTION, COSTS, AND CIVIL PENALTIES**

The State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Mary Ann WehmueLLer, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code §24-5-0.5-1 *et seq.*, for injunctive relief, consumer restitution, investigative costs, civil penalties, and other relief.

**PARTIES**

1. The Plaintiff, State of Indiana is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code §24-5-0.5-4(c).

2. The Defendant, Grace Mark, is an individual, who at all times relevant to this complaint was the sole owner of Mark Motors and regularly engaged in the retail sale of used motor vehicles, with a principal place of business in Marion County located at 3030 South Madison Avenue, Indianapolis, Indiana 46227.

3. The Defendant, Jason M. Mark, is an individual, who at all times relevant to this complaint, ran and managed the daily operations of Mark Motors and regularly engaged in the

retail sale of used motor vehicles, with a principal place of business in Marion County located at 3030 South Madison Avenue, Indianapolis, Indiana 46227.

### FACTS

4. At least since March 2005, the Defendants have engaged in the retail sale of used motor vehicles to consumers.

5. On May 26, 2005, the Indiana Attorney General's Consumer Protection Division issued a title non-delivery warning letter to Mark Motors, informing the dealership of its duty to comply with Indiana's motor vehicle title delivery statute when engaging in vehicle sales. The warning letter is attached hereto and incorporated by reference as State's Exhibit "A".

6. On or about June 6, 2005 Melissa Thompson (hereinafter "Thompson") purchased a 1997 Ford Contour, vehicle identification number, 1FALP6531VK131549 (hereinafter "Contour"), from the Defendants for a total purchase price of \$2,968.00

7. The Defendants failed to deliver the Contour's title to Thompson at the time of sale or delivery.

8. One June 6, 2005, the Defendant Jason Mark, provided Thompson with a "21-day affidavit" as permitted by Ind. Code §9-17-3-3.1, in which he represented that Mark Motors would deliver the Contour title to Thompson on or before June 27, 2005.

9. To date, the Defendants have failed to provide Ms. Thompson with the Contour's title.

10. On or about December 5, 2005 Juan Rojas (hereinafter "Rojas") purchased a 1996 Mitsubishi Eclipse, vehicle identification number, 4A3AK34Y9TE351896 (hereinafter "Mitsubishi"), from the Defendants for a total purchase price of \$3,694.70.

11. The Defendants failed to deliver the Mitsubishi title to Rojas at the time of sale or delivery.

12. On December 5, 2005, an employee of the Defendants gave Mr. Rojas a “21-day affidavit” as permitted by Ind. Code §9-17-3-3.1, in which the employee represented that Mark Motors would deliver the Mitsubishi title to Rojas on or before December 26, 2005.

13. To date, the Defendants have failed to deliver the Mitsubishi title to Mr. Rojas.

14. On or about December 10, 2005 Linda Hurd (hereinafter “Hurd”), purchased a 1995 Ford Taurus, vehicle identification number, 1FALP52U4SA157930 (hereinafter “Taurus”), from the Defendants for a total purchase price of \$1,128.94.

15. The Defendants failed to deliver the Taurus title to Hurd at the time of sale or delivery.

16. On December 10, 2005, an employee of the Defendants gave Ms. Hurd a “21-day affidavit” as permitted by Ind. Code §9-17-3-3.1, in which the employee represented that Mark Motors would deliver the Taurus title to Hurd on or before December 31, 2005.

17. To date, the Defendants have failed to deliver the Taurus title to Ms. Hurd.

18. On or about January 6, 2006 Charlotte Harp (hereinafter “Harp”), purchased a 1995 Chevrolet Cavalier, vehicle identification number 1G1JC1244S7131310, (hereinafter “Chevrolet”), from the Defendants for a total purchase price of \$3,273.16.

19. The Defendants failed to deliver the Chevrolet title to Harp at the time of sale or delivery.

20. On January 6, 2006, Dawn R. Fair, an employee of the Defendants, gave Ms. Harp a “21-day affidavit” as permitted by Ind. Code §9-17-3-3.1, on which she represented that

Mark Motors would make reasonable commercial efforts to produce a valid certificate of title for Ms. Harp.

21. Dawn R. Fair failed to fully complete Harp's "21-day affidavit" and did not identify a date on which Mark Motors would deliver title to Harp.

22. To date, the Defendants have failed to deliver the Chevrolet title to Ms. Harp.

### **COUNT I - VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT**

23. The transactions identified in paragraphs 6, 10, 14 and 18 are "consumer transactions" as defined by Ind. Code §24-5-0.5-2(1).

24. The Defendants, are "suppliers" as defined in Ind. Code §24-5-0.5-2(3).

25. The representations made by the Defendants and/or their employees to consumers Thompson, Rojas, Hurd and Harp, violate the Indiana Deceptive Consumer Sales Act as follows:

- (a) the Defendants and/or their agents misrepresented warranty of title in violation of Ind. Code §24-5-0.5-3(a)(8);
- (b) the Defendants and/or their agents misrepresented that the Defendants would deliver the consumers' titles within a stated or reasonable period of time from the date of purchase in violation of Ind. Code §24-5-0.5-3(a)(10).

25. On the dates of sale, the Defendants knew or should have known that they could not deliver the consumers' titles as represented.

### **COUNT II VIOLATIONS OF TITLE DELIVERY STATUTE**

26. Plaintiff realleges paragraphs 1 through 25.

27. The Defendants' failure to deliver titles to consumers Thompson, Rojas, Hurd and Harp, violates Ind. Code §9-17-3-3.

**COUNT III**  
**INCURABLE DECEPTIVE ACTS**

28. Plaintiff realleges paragraphs 1 through 27.

29. The Defendants intentionally sold the consumers vehicles, knowing they could not deliver titles as represented.

30. The Defendants' representations as referenced above constitute incurable deceptive acts and are actionable by the Attorney General pursuant to Ind. Code §24-5-0.5-1 *et seq.*

**IRREPARABLE INJURY**

31. The misrepresentations set forth above will continue and will cause irreparable injury unless the Defendants Grace Mark and Jason Mark are enjoined from engaging in further conduct in violation of Ind. Code §24-5-0.5-1 *et seq.*

**RELIEF**

**WHEREFORE**, Plaintiff, State of Indiana, requests that the Court enter judgment against the Defendants Grace Mark and Jason Mark, as follows:

a. A permanent injunction pursuant to Ind. Code §24-5-0.5-4(c)(1), enjoining the Defendants, their agents, representatives, employees, successors, and assigns, from:

(1) selling motor vehicles without delivering vehicle titles as required by Ind. Code §9-17-3-3;

(2) misrepresenting warranty of title in violation of Ind. Code §24-5-0.5-3(a)(8); and,

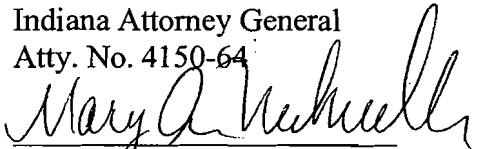
(3) misrepresenting their ability to deliver vehicle titles within a stated or reasonable period of time in violation of Ind. Code §24-5-0.5-3(a)(10).

- b. Consumer restitution pursuant to Ind. Code §24-5-0.5-4(c)(2), in the form of a Court Order directing the Indiana Bureau of Motor Vehicles to issue titles for the vehicles identified in paragraphs 6, 10, 14, and 18, to the specified consumers and/or their lienholders;
- c. Costs pursuant to Ind. Code §24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- d. On Count I of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-4(g), for the Defendants' knowing violations of the Deceptive Consumer Sales Act, in the amount of \$500.00 per violation specific to the Thompson transaction and in the amount of \$5,000.00 per violation specific to the Rojas, Hurd, and Harp transactions, payable to the State of Indiana;
- e. On Count III of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-8, for the Defendants' intentional violations of the Deceptive Consumer Sales Act, in the amount of \$500.00 per violation, payable to the State of Indiana; and
- f. All other proper relief.

Respectfully submitted,

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By:

  
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